

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telecommunications Carriers Eligible to	)	
Receive Universal Service Support	)	
	)	
i-wireless, LLC	)	
	)	WC Docket No. 09-197
Petition for Expansion of Eligible	)	
Telecommunications Carrier Designated	)	
Service Area in the States of Alabama,	)	
Connecticut, New Hampshire, New York,	)	
Tennessee, and the Commonwealth of Virginia	)	
	)	

**PETITION OF I-WIRELESS, LLC FOR EXPANSION OF ELIGIBLE  
TELECOMMUNICATIONS CARRIER DESIGNATED SERVICE AREA IN THE STATES  
OF ALABAMA, CONNECTICUT, NEW HAMPSHIRE, NEW YORK, TENNESSEE, AND  
THE COMMONWEALTH OF VIRGINIA**

**I. Introduction**

i-wireless, LLC (i-wireless or the Company), pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act)<sup>1</sup> and sections 54.201-54.207 of the Federal Communications Commission's (FCC's or the Commission's) rules,<sup>2</sup> hereby files this Petition seeking a service area expansion of its designation as an eligible telecommunications carrier (ETC) in the States of Alabama, Connecticut, New Hampshire, New York, Tennessee, and the Commonwealth of Virginia (collectively, the Federal ETC States). i-wireless requests this expansion for the limited purpose of offering Lifeline services to qualifying low-income consumers in the Federal ETC States.

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<sup>1</sup> See 47 U.S.C. § 214(e)(6).

<sup>2</sup> See 47 C.F.R. §§ 54.201-54.207.

i-wireless originally was designated as an ETC by the Commission's Wireline Competition Bureau (Bureau) to provide Lifeline services to low-income consumers in the Federal ETC States on June 13, 2012.<sup>3</sup> The Bureau limited i-wireless's designated service area to the Study Areas specified in Appendix B and Appendix C to the i-wireless ETC Order.<sup>4</sup> i-wireless has successfully provided Lifeline services in those study areas since that time, and currently provides service to approximately 312,556 Lifeline customers in the Federal ETC States. All of the Federal ETC States have submitted affirmative statements to the Commission indicating that they do not regulate ETC designation requests by commercial mobile radio service (CMRS) resellers. Recently, i-wireless reached an agreement with Sprint Corporation (Sprint) and its subsidiary Virgin Mobile USA, LP (Virgin Mobile) which creates a partnership between the companies for the purpose of providing Lifeline services. As part of this transaction, Sprint will acquire a controlling interest in i-wireless and Virgin Mobile's existing Lifeline customer base will be transferred to i-wireless.<sup>5</sup> In order to implement this partnership, i-wireless seeks expansion of its ETC designation in the Federal ETC States for the sole purpose of offering Lifeline service as a CMRS reseller.<sup>6</sup>

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<sup>3</sup> See *Telecommunications Carriers Eligible for Universal Service Support, i-wireless, LLC Amended Petition for Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Delaware, Florida, New Hampshire, North Carolina, New York, Tennessee, the Commonwealth of Virginia, and the District of Columbia, et al.*, WC Docket No. 97-197, Order, DA 12-934 (rel. June 13, 2012) (i-wireless ETC Order).

<sup>4</sup> See i-wireless ETC Order ¶ 32.

<sup>5</sup> Virgin Mobile's ETC service area in the Federal ETC states includes areas where i-wireless is not currently designated as an ETC.

<sup>6</sup> In connection with the Sprint transaction, i-wireless also has submitted for approval a revised Compliance Plan. See i-wireless, LLC's Amended Compliance Plan, WC Docket Nos. 09-197, 11-42, (filed June 24, 2016). Previously, i-wireless filed a petition seeking ETC authority in Maine and expansion of its ETC service area in Texas, as well as a separate petition seeking ETC service area clarification in Florida, both of which also are currently pending before the Commission. See i-wireless, LLC Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Maine and Expansion of Designated Service Area in the State of Texas, WC Docket No. 09-197 (filed Sept. 9, 2013); i-wireless, LLC Request to Amend Designated Service Area in the State of Florida, WC Docket No. 09-197 (filed Feb. 18, 2013). In order to fully implement the transaction between i-wireless and Sprint, i-wireless respectfully submits that it is necessary and appropriate for the Commission to grant these additional petitions and approve i-wireless's amended Compliance Plan on an expedited basis.

It is in the public interest for the Commission to grant this Petition as i-wireless will be able to provide low-income consumers in these states with reliable and cost-effective wireless services, including mobile broadband services that meet the Commission's minimum service standards when effective. i-wireless's Lifeline Compliance Plan was last revised on September 9, 2011 and approved by the Bureau on October 21, 2011.<sup>7</sup> Further revisions to i-wireless's Compliance Plan following the transaction with Sprint were filed with the Commission on June 24, 2016 and are pending approval by the Bureau.<sup>8</sup> Accordingly, i-wireless respectfully requests that the Commission grant this petition on an expedited basis to expand i-wireless's designated service area in the Federal ETC States for the sole purpose of providing Lifeline services to low-income consumers in the Federal ETC States, including the Virgin Mobile Lifeline customers that will be transferred to i-wireless.

## **II. Background**

i-wireless provides CMRS to consumers throughout the United States. The Company also is designated as an ETC to provide wireless Lifeline services in 39 states and the District of Columbia. On April 29, 2016, i-wireless entered into an agreement with Sprint and its subsidiary Virgin Mobile whereby 70 percent ownership and control of i-wireless will be acquired by Sprint. The Commission's International Bureau approved the transfer of control of i-wireless's international section 214 authority to Sprint on July 1, 2016.<sup>9</sup> As part of this transaction, Virgin Mobile's existing Lifeline customer base will be transferred to i-wireless, which will allow the

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<sup>7</sup> See *Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45, WC Docket No. 97-197, Order, DA 11-1763 (rel. Oct. 21, 2011).

<sup>8</sup> See i-wireless, LLC's Amended Compliance Plan, WC Docket Nos. 09-197, 11-42, (filed June 24, 2016).

<sup>9</sup> See *International Authorizations Granted Section 214 Applications (47 C.F.R. § 63.18); Section 310(b) Requests*, FCC Report No. Tel-01804, DA No. 16-827 (rel. July 21, 2016).

Company to provide Lifeline service to thousands of additional low-income consumers, including consumers residing in the Federal ETC States.

### **III. ETC Expansion in the Federal ETC States**

i-wireless originally was designated as an ETC by the Commission to provide Lifeline services to low-income consumers in the Federal ETC States in certain rural and non-rural incumbent local exchange carrier (ILEC) study areas in each of those states.<sup>10</sup> Through the Sprint transaction, i-wireless seeks authority to serve Virgin Mobile customers in additional areas that are within the Sprint wireless network coverage. Therefore, i-wireless seeks to extend its designated service area in the Federal ETC States to be consistent with the coverage and authorized Lifeline service territory of Virgin Mobile and to offer competitive wireless service to additional low-income consumers in the Federal ETC States. Specifically, Virgin Mobile was designated to serve in certain non-rural and rural study areas in Alabama, Connecticut and New Hampshire that were not included in i-wireless's designation.<sup>11</sup> i-wireless seeks to add those study areas in those states to its designated service territory (*see Exhibit A*). In addition, Virgin Mobile was designated to serve "in its licensed service areas" in New York, Tennessee and Virginia.<sup>12</sup> In order to serve the Virgin Mobile Lifeline customers, i-wireless seeks designation in the Sprint "licensed service areas" in New York, Tennessee and Virginia, which includes the study areas in Exhibit B that were not included in i-wireless's ETC designation (*see Exhibit B*).

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<sup>10</sup> See i-wireless ETC Order ¶ 32 and Appendix B.

<sup>11</sup> See *Telecommunications Carriers Eligible for Universal Service Support, Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, et al.*, WC Docket No. 09-197, Order, DA 10-2433, ¶ 27 and Appendices B and C (2010).

<sup>12</sup> See *Telecommunications Carriers Eligible for Universal Service Support, Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A), Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, et al.*, WC Docket No. 09-197, Order, FCC 09-18, ¶ 40 (2009). The study areas were included in the Virgin Mobile ETC designation petitions.

While the authority to designate ETCs traditionally falls on state utility commissions, section 214(e)(6) of the Act provides that the Commission may confer ETC status on a common carrier where the carrier's services do not fall subject to the jurisdiction of a state commission. As previously stated, the Federal ETC States do not assert jurisdiction over ETC designation requests by CMRS resellers.<sup>13</sup>

Accordingly, i-wireless requests that the Commission exercise its authority under section 214(e)(6) and determine that it is not subject to the ETC jurisdiction of the Federal ETC States for purposes of expanding i-wireless's designated service area to provide Lifeline services in those states.

#### **IV. Expansion of i-wireless's ETC Designation in the Federal ETC States Will Promote the Public Interest**

Section 54.202(b) of the Commission's rules mandates that the agency must determine that an ETC designation is in the public interest. In considering whether any designation is in the public interest, "the Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering."<sup>14</sup> First, i-wireless's service territory expansion will allow i-wireless to replace Virgin Mobile as the wireless Lifeline provider for thousands of eligible subscribers and will add a competitor in those areas going forward.

In addition, i-wireless's service meets the goals of the Act. For example, the Act aimed to "secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies" to all American

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<sup>13</sup> Copies of the affirmative statements from each of the Federal ETC States regarding their decisions not to assert jurisdiction over ETC designation requests by CMRS resellers are attached as **Exhibit C**.

<sup>14</sup> See *Telecommunications Carriers Eligible for Universal Service Support, Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama et al.*, WC Docket No. 09-197, Order, DA 10-2433, ¶ 6 (2010).

consumers.<sup>15</sup> Expanding i-wireless's service area in the Federal ETC States will provide additional consumers with higher quality services at lower prices in the designated service areas. i-wireless intends to provide voice and broadband service offerings that meet or exceed the Commission's minimum service standards. i-wireless intends to improve the Virgin Mobile Lifeline customers' plans from 350 minutes and unlimited texts to 500 minutes, unlimited texts, and 50 MB of broadband.

Further, i-wireless's prepaid services offer flexibility, providing customers with custom plans for voice and data services. i-wireless's plans allow customers that might not otherwise have access to expensive post-paid plans to subscribe to communications services without the hurdle of a credit check or the commitment of a contract. The service allows customers to purchase minutes and data on an "as needed" basis.

## **V. Anti-Drug Abuse Certification**

No party to this Petition is subject to denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. § 862.

## **VI. Conclusion**

The Commission should grant i-wireless's petition to expand its territory in the Federal ETC States because the Company is already designated as an ETC in these states and seeks to compete to provide its affordable Lifeline services to additional eligible low-income customers in the expanded service areas served by Virgin Mobile. Further, the Commission's grant of this Petition to expand i-wireless's designated ETC service area for the purpose of offering Lifeline services in the Federal ETC States would promote the public interest. i-wireless requests that the Commission grant this Petition on an expedited basis so that i-wireless may begin providing the

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<sup>15</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

benefits of Lifeline service to additional qualifying low-income consumers in the Federal ETC States.

Respectfully submitted,



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Joshua T. Guyan  
Jennifer R. Wainwright  
Kelley Drye & Warren LLP  
3050 K Street, NW, Suite 400  
Washington, D.C. 20007  
(202) 342-8400

*Counsel for i-wireless, LLC*

August 17, 2016

## **EXHIBIT A**

**Expanded Study Areas in Alabama, Connecticut and New Hampshire**



State	Expanded Study Area
Alabama	Ardmore Telephone Company, Inc. GTC, Inc. d/b/a GT Com, Inc. Knology of the Valley, Inc. (previously Interstate Telephone Co.) Knology Total Communications, Inc. (previously National Telephone Co. of Alabama) Valley Telephone Company, LLC Windstream Alabama, LLC d/b/a Windstream (previously Alltel Alabama, Inc.)
Connecticut	Verizon New York Inc. (previously Verizon Connecticut)
New Hampshire	Hollis Telephone Company, Inc. d/b/a TDS Telecom Northland Telephone of ME, Inc. d/b/a Northland Telephone Company of Maine, Inc.

## **EXHIBIT B**

### **Expanded Study Areas in New York, Tennessee and Virginia**

State	Expanded Study Area
New York	Citizens Telecommunications Company of New York d/b/a Frontier Communications of New York Windstream New York, Inc. d/b/a Windstream (previously Alltel of New York, Inc.)
Tennessee	United Telephone – Southeast
Virginia	Amelia Telephone Corporation d/b/a TDS Telecom

## **EXHIBIT C**

### **Affirmative Statements by the Federal ETC States**

# Alabama Public Service Commission

## Orders

PINE BELT CELLULAR, INC. and PINE  
BELT PCS, INC.,

Joint Petitioners

PETITION: For ETC status and/or  
clarification regarding the jurisdiction of  
the Commission to grant ETC status to  
wireless carriers.

DOCKET U-4400

### ORDER

#### BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214(e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural

service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, *in any respect*, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12<sup>th</sup> day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

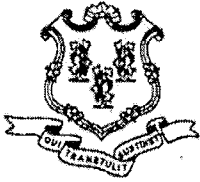
Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary



**STATE OF CONNECTICUT**  
**DEPARTMENT OF PUBLIC UTILITY CONTROL**

November 8, 2010

In reply, please refer to:  
UR:PAP

Jacqueline Hankins  
Helein & Marashlian  
1420 Spring Hill Rd  
Suite 205  
McLean, VA 22102

Re: Request for Letter Clarifying Jurisdiction Over Wireless ETC Petitions

Dear Ms. Hankins:

The Department of Public Utility Control (Department) acknowledges receipt of your October 25, 2010 letter filed on behalf of Boomerang Wireless, LLC d/b/a Ready Mobile (Ready Mobile) requesting clarification as to whether the Department claims jurisdiction to designate wireless eligible telecommunications carriers (ETC) in Connecticut.

The Department does not regulate or license mobile carrier services' rates and charges and therefore, Ready Mobile should apply to the Federal Communications Commission for purposes of being designed an ETC.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

Kimberley J. Santopietro  
Executive Secretary



THE STATE OF NEW HAMPSHIRE

CHAIRMAN  
Thomas B. Getz

COMMISSIONERS  
Clifton C. Below  
Amy L. Ignatius

EXECUTIVE DIRECTOR  
AND SECRETARY  
Debra A. Howland



PUBLIC UTILITIES COMMISSION  
21 S. Fruit Street, Suite 10  
Concord, N.H. 03301-2429

Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH  
1-800-735-2964

Website:  
[www.puc.nh.gov](http://www.puc.nh.gov)

March 28, 2011

**RE: ETC Certification in New Hampshire**

The federal Universal Service Fund (USF) was created by the Federal Communications Commission (FCC) to promote the availability of quality services at just and reasonable rates to all consumers including low-income customers and those in high cost areas and to increase nationwide access to advanced services in schools, libraries and rural health care facilities. To qualify for universal service funding a carrier must first be certified as an Eligible Telecommunications Carrier (ETC) by the state public utilities commission or, if the state does not assert this authority, by the FCC. *See* 47 U.S.C. §214 (e).

The New Hampshire Public Utilities Commission maintains authority to determine whether landline telecommunications carriers qualify as ETCs. Pursuant to New Hampshire RSA 362:6, the Commission has no jurisdiction over mobile radio communications services. Consequently, the state declines jurisdiction over the certification of wireless carriers as ETCs, leaving that responsibility to the FCC.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Anne Ross".

F. Anne Ross  
General Counsel  
New Hampshire Public Utilities Commission

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

[www.dps.state.ny.us](http://www.dps.state.ny.us)

PUBLIC SERVICE COMMISSION

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PETER MCGOWAN  
*General Counsel*

JACLYN A. BRILLING  
*Secretary*

July 28, 2010

TO WHOM IT MAY CONCERN:

Re: i-wireless CMRS Jurisdiction

We have received a letter from i-wireless, LLC (i-wireless), requesting a statement that the New York State Public Service Commission does not exercise jurisdiction over CMRS providers for the purpose of making determinations regarding Eligible Telecommunications Carrier designations under section 214 (e)(6) of 47 U.S.C. In response to this request, please be advised that section 5 (6)(a) of the New York State Public Service Law provides that:

Application of the provisions of this chapter to cellular telephone services is suspended unless the commission, no sooner than one year after the effective date of this subdivision, makes a determination, after notice and hearing, that suspension of the application of provisions of this chapter shall cease to the extent found necessary to protect the public interest.

The New York State Public Service Commission has not made a determination as of this date that regulation should be reinstituted under section 5 (6)(a) of the Public Service Law. Consequently, based on the representation by i-wireless that it is a mobile virtual network operator reselling wireless services, i-wireless would not be subject to New York State Public Service Commission jurisdiction for the purpose of making an Eligible Telecommunications Carrier designation.

Very truly yours,

*Maurkeen J. McCauley*  
Maurkeen J. McCauley  
Assistant Counsel

*M. Cauley*

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

APPLICATION OF ADVANTAGE CELLULAR  
SYSTEMS, INC. TO BE DESIGNATED AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER

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DOCKET NO.  
02-01245

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ORDER

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This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier ("Application")* filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.<sup>1</sup>

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission ("FCC") to perform the ETC designation.<sup>2</sup>

<sup>1</sup> This finding is not inconsistent with the Authority's decision in *In re Universal Service Generic Contested Case*, Docket 97-05222, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required interstate telecommunications carriers to contribute to the Interstate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides interstate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

<sup>2</sup> 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."<sup>3</sup> Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."<sup>4</sup>

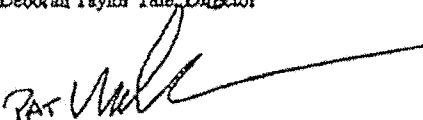
The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

**IT IS THEREFORE ORDERED THAT:**

*The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.*

  
Sara Kyle, Chairman

  
Deborah Taylor Tate, Director

  
Pat Miller, Director

<sup>3</sup> *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 95-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.R. 12208, 12264, § 113 (June 30, 2000).

<sup>4</sup> *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION DOCUMENT CONTROL  
AT RICHMOND, APRIL 9, 2004

IN RE:

2004 APR -9 A 11:46

APPLICATION OF VIRGINIA CELLULAR LLC

CASE NO. PUC-2001-00263

For designation as an eligible  
telecommunications provider under  
47 U.S.C. § 214(e) (2)

ORDER INVITING COMMENTS AND/OR REQUESTS FOR HEARING

On December 21, 2001, Virginia Cellular LLC ("Virginia Cellular") filed an application with the State Corporation Commission ("Commission") for designation as an eligible telecommunications carrier ("ETC"). This was the first application by a Commercial Mobile Radio Service ("CMRS") carrier for ETC designation.<sup>1</sup> Pursuant to the Order Requesting Comments, Objections, or Requests for Hearing, issued by the Commission on January 24, 2002, the Virginia Telecommunications Industry Association and NTELOS Telephone Inc. ("NTELOS") filed their respective comments and requests for hearing on February 20, 2002. Virginia Cellular filed Reply Comments on March 6, 2002. Our Order of April 9, 2002, found that § 214(e)(6) of the Act is applicable to Virginia Cellular's application because this Commission has not asserted jurisdiction over CMRS carriers and that Virginia Cellular should apply to the Federal Communications Commission ("FCC") for ETC designation.

Virginia Cellular filed its Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia with the FCC on April 26, 2002. On January 22, 2004, the FCC released its order designating Virginia Cellular as an ETC in specific portions of its licensed

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<sup>1</sup> Virginia Cellular is a CMRS carrier as defined in 47 U.S.C. § 153(27) and is authorized as the "A-band" cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland and the cities of Harrisonburg, Staunton, and Waynesboro.

service area in the Commonwealth of Virginia subject to certain conditions ("FCC's January 22, 2004, Order").<sup>2</sup>

The FCC's January 22, 2004, Order further stated that Virginia Cellular's request to redefine the service areas of Shenandoah Telephone Company ("Shentel") and MGW Telephone Company ("MGW") in Virginia pursuant to § 214(3)(5) of the Telecommunications Act of 1996 ("Act") was granted subject to the agreement of this Commission. On March 2, 2004, the FCC filed its January 22, 2004, Order as a petition in this case.<sup>3</sup>

Section 214(e)(5) of the Act states:

SERVICE AREA DEFINED. - The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

In this instance, the FCC has determined that the service areas of Shentel and MGW, which are both rural telephone companies under the Act, should be redefined as requested by Virginia Cellular.<sup>4</sup> The FCC further recognizes that the "Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to determine the redefinition proposal and examine whether it should be approved."<sup>5</sup>

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<sup>2</sup> CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*.

<sup>3</sup> See paragraph 45 of the FCC's January 22, 2004, Order. The FCC, in accordance with § 54.207(d) of its rules, requests that the Virginia Commission treat this Order as a petition to redefine a service area under § 54.207(d)(1) of the FCC's rules. A copy of the petition can be obtained from the Commission's website at: <http://www.state.va.us/scc/caseinfo.htm>.

<sup>4</sup> The FCC denied Virginia Cellular's request to redefine the study area of NTELOS. See paragraph 50 of the FCC's January 22, 2004, Order.

<sup>5</sup> The FCC's January 24, 2004, Order at paragraph 2. (citations omitted)

The Commission finds that interested parties should be afforded the opportunity to comment and/or request a hearing regarding the FCC's petition to redefine the service areas of Shentel and MGW. We note that the FCC believes that its proposed redefinition of these service areas should not harm either Shentel or MGW.<sup>6</sup> However, we request any interested party to specifically address in its comments whether our agreeing to the FCC's proposal to redefine the service areas of Shentel and MGW would harm these companies.

NOW UPON CONSIDERATION of all the pleadings of record and the applicable law, the Commission is of the opinion that interested parties should be allowed to comment or request a hearing regarding the FCC's proposed redefinition of Shentel's and MGW's service areas.

Accordingly, IT IS ORDERED THAT:

(1) Any interested party desiring to comment regarding the redefinition of Shentel's and MGW's service areas may do so by directing such comments in writing on or before May 7, 2004, to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested parties desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>.

(2) On or before May 7, 2004, any interested party wishing to request a hearing regarding the redefinition of Shentel's and MGW's service areas shall file an original and fifteen (15) copies of its request for hearing in writing with the Clerk of the Commission at the address set forth above. Written requests for hearing shall refer to Case No. PUC-2001-00263 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter.

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<sup>6</sup> See paragraphs 43 and 44 of the FCC's January 22, 2004, Order.



(3) On or before June 1, 2004, interested parties may file with the Clerk of the Commission an original and fifteen (15) copies of any responses to the comments and requests for hearing filed with the Commission. A copy of the response shall be delivered to any person who filed comments or requests for hearing.

(4) This matter is continued generally.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: each local exchange telephone company licensed to do business in Virginia, as shown on Attachment A hereto; David A. LaFuria, Esquire, Lukas, Nace, Gutierrez & Sachs, Chartered, 1111 19th Street, N.W., Suite 1200, Washington, D.C. 20036; Thomas Buckley, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554; Virginia Telecommunications Industry Association, c/o Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; L. Ronald Smith, President and General Manager, Shenandoah Telephone Company, P.O. Box 105, Williamsville, Virginia 24487; Lori Warren, Director of Regulatory Affairs, MGW Telephone Company, P.O. Box 459, Edinburg, Virginia 22824-0459; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Communications, Public Utility Accounting, and Economics and Finance.

## DECLARATION

I, Paul McAleese, Chief Executive Officer of i-wireless, LLC do hereby affirm under penalty of perjury that I have reviewed all of the factual assertions set forth in the foregoing petition for ETC expansion in Alabama, Connecticut, New Hampshire, New York, Tennessee, and the Commonwealth of Virginia and that all such statements made therein are true and correct to the best of my knowledge, information and belief.

To the best of my knowledge, no party to this Petition, nor any of their officers, directors, or persons holding five percent or more of the outstanding stock or shares (voting or non-voting) as specified in Section 1.2002(b) of the Commission's rules are subject to denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

Executed on August 15, 2016



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Paul McAleese  
Chief Executive Officer